

the FCC may preempt local franchising processes and procedures.<sup>115</sup> To the contrary, Congress intended the Cable Act to preserve local franchising processes.<sup>116</sup> Thus, any rules adopted by the FCC interfering with or preempting local franchising procedures, or any preemption of local franchising based on 47 U.S.C. § 151, would be arbitrary and capricious.<sup>117</sup>

2. Section 4(i) of the Communications Act, 47 U.S.C. § 154(i).

Section 4(i) of the Communications Act, 47 U.S.C. § 154(i), provides that the FCC may “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions.”<sup>118</sup> This provision is known as the Communications Act’s “necessary and proper” clause.<sup>119</sup> Authority wielded under § 4(i), however, must be based in specific powers the FCC possesses elsewhere in the Communications Act.<sup>120</sup> The following quote from former FCC Chairman Michael Powell is illustrative of this point:

[i]t is important to emphasize that section 4(i) is not a stand-alone basis of authority and cannot be read in isolation. It is more akin to a “necessary and proper” clause. Section 4(i)’s authority must be “reasonably ancillary” to other express provisions. And, by its express terms, our exercise of that authority cannot be “inconsistent” with other provisions of the Act. The reason for these limitations is plain: Were an agency afforded *carte blanche* under such a broad provision, irrespective of subsequent

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<sup>115</sup> See, e.g., *Cable Television Ass’n of New York v. Finneran*, 954 F.2d 91, 98 (2<sup>nd</sup> Cir. 1992) (The “Act cut back on federal authority in some places – particularly control of franchising.”).

<sup>116</sup> *City of Dallas*, 165 F.3d at 348-49. See also *Cable TV Fund 14-A, Ltd. V. City of Naperville*, 1997 WL 280692 at \*16 (N.D. Ill. 1997).

<sup>117</sup> See, e.g., *Motion Picture Ass’n of America*, 309 F.3d at 801 (“Deference to an agency’s interpretation of a statute is due only when the agency acts pursuant to ‘delegated authority.’”).

<sup>118</sup> 47 U.S.C. § 154(i).

<sup>119</sup> See, e.g., *U.S. West, Inc. v. FCC*, 778 F.2d 23, 26 (D.C. Cir. 1985).

<sup>120</sup> *Id.* See also *California v. FCC*, 905 F.2d 1217, 1240 at n. 35 (9<sup>th</sup> Cir. 1990) (concluding that Title I of the Communications Act “is not an independent source of authority;...it confers on the FCC only such power as is ancillary to the Commission’s specific statutory responsibilities....”) and *North American Telecomms. Assoc. v. FCC*, 772 F.2d 1282, 1292 (7<sup>th</sup> Cir. 1985) (stating that “Section 4(i) is not infinitely elastic”).

congressional acts that did not squarely prohibit action, it would be able to expand greatly its regulatory reach.<sup>121</sup>

The District of Columbia Circuit Court of Appeals agreed with this explanation of the limits on FCC authority under 47 U.S.C. § 154(i).<sup>122</sup> Accordingly, it is clear that the FCC cannot act under § 154(i) without explicit delegated authority from another provision of the Communications Act.<sup>123</sup>

Title VI may furnish the FCC with limited authority over certain franchise terms, but that authority does not reach the local franchising process and local government property rights. Indeed, the FCC has a very limited role to play under the dual federal-state/local regulatory scheme Congress established in Title VI. That scheme preserves municipal authority over public rights-of-way, including the right to require franchises from cable operators,<sup>124</sup> to the extent permitted by state law. There is no language in Title VI or the legislative history of the Cable Act which expressly states otherwise and delegates authority to the Commission to preempt local franchise processes. Consequently, there is no explicit authority in the Cable Act on which the FCC can lawfully base any “ancillary” power to preempt the local franchising requirements and procedures.<sup>125</sup> For this reason, § 4(i) of the Communications Act, 47 U.S.C. § 154(i), cannot

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<sup>121</sup> *Motion Picture Ass’n of America v. FCC*, 309 F.3d at 806.

<sup>122</sup> *Id.*

<sup>123</sup> See *Louisiana Public Service Comm’n*, 476 U.S. at 375 (“[A] federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority.... We simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate federal policy. An agency may not confer power upon itself.”).

<sup>124</sup> See *National Cable Television Ass’n v. FCC*, 33 F.3d 66, 69 (D.C. Cir. 1994) (noting that one of the fundamental purposes of the Cable Act is to “preserve the local franchising system”).

<sup>125</sup> See, e.g., *California*, 905 F.2d at 1240, n. 35 (wherein the court stated, in the context of Title II common carrier regulation, “[t]he system of dual regulation established by Congress cannot be evaded by the talismanic invocation of the Commission’s Title I authority.”). This conclusion is just as relevant to the dual regulatory scheme established by Title VI of the Communications Act.

reasonably be construed to permit the FCC to preempt local franchising schemes or to adopt rules intruding into the franchising process.

If § 154(i) was interpreted to authorize preemption of local franchising requirements and procedures, it would render one of the underlying purposes of Title VI meaningless (*i.e.*, preserving local franchising authority). Such an approach would be inconsistent with the basic precepts of statutory construction, which provide that the courts “should not read one part of a statute so as to deprive another part of meaning.”<sup>126</sup>

C. **Any Attempt by the FCC to Interfere with or to Supersede Local Franchising Authority Could Have Constitutional Implications.**

Any attempt to preempt lawful local government control of public rights-of-way by interfering with or superseding local franchising requirements, procedures and processes could constitute an unconstitutional taking under the Fifth Amendment of the United States Constitution. This principle goes back to the Telegraph Act of 1866. For example, in *Postal Tel. Cable Co. v. City of Newport*, the Kentucky Court of Appeals, citing several United States Supreme Court cases held:

The Congress of the United States has no power to take private property for public purposes without compensation, and it can no more take the property of a state or one of its municipalities than the property of an individual. The acts of Congress...conferred on the [telecommunications company] no right to use the streets and alleys of the city...which belonged to the municipality.<sup>127</sup>

In the same vein, the United States Supreme Court has consistently held that local public rights-of-way cannot be given away to communications companies by Congress without reasonable

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<sup>126</sup> See, e.g., *Carter v. Helmsley-Spear, Inc.*, 71 F.3d 77, 85 (2<sup>nd</sup> Cir. 1995).

<sup>127</sup> See *Postal Tel. Cable Co. v. City of Newport*, 76 S.W. 159, 160 (Ky. 1903) (citing *St. Louis v. Western Union Tel. Co.*, 148 U.S. 92 (1893) and *Postal Tel. Co. v. Baltimore*, 156 U.S. 210 (1895)). See also Clarence A. West, *The Information Highway Must Pay Its Way Through Cities: A Discussion of the Authority of State and Local Governments to be Compensated for the Use of Public Rights-of-Way*, 1 Mich. Telecomm. Tech L. Rev. 29 (1995).

compensation for the use of the local public rights-of-way.<sup>128</sup> For instance, in *St. Louis v. Western Union Tel. Co.*, the court rejected Western Union's claim that a City could not impose a pole charge on its use of the local rights-of-way, in light of the Telegraph Act of 1866,<sup>129</sup> which granted rights to telegraph companies to use federal post roads for interstate telegraph operations and prohibited states and local governments from interfering with those operations.<sup>130</sup> In so doing, the Court held that the 1866 Telegraph Act did not grant an unrestricted right to appropriate the public property of a state.<sup>131</sup> Accordingly, the federal government did not have the power to "dispossess the State of such control and use, or appropriate the same to its own benefit, or the benefit of any corporations or grantees, without suitable compensation to the State. This rule extends to streets and highways; they are public property of the state."<sup>132</sup>

In *Western Union Tel. Co. v. City of Richmond*, Justice Holmes held the Telegraph Act of 1866 was "only permissive, not a source of positive rights.... [The statute] gives the appellant [the telegraph company] no right to use the soil of the streets...."<sup>133</sup> Finally, in *Postal Tel.-Cable Co. v. City Richmond*, the last significant Supreme Court Case addressing the Telegraph Act of 1866 and local authority to receive compensation, the Supreme Court succinctly held that "even interstate business must pay its way – in this case for its right-of-way and the expense incident to the use of it."<sup>134</sup>

This line of cases illustrates that there is over one hundred years of legal precedent holding that the federal government cannot take local public rights-of-way without just

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<sup>128</sup> *St. Louis v. Western Union Tel. Co.*, 148 U.S. 92 (1893).

<sup>129</sup> *Id.*

<sup>130</sup> 14 Stat. 221 (1866).

<sup>131</sup> *St. Louis v. Western Union Tel. Co.*, 148 U.S. 92, 100 (1893).

<sup>132</sup> *Id.* at 100-01.

<sup>133</sup> *Western Union Tel. Co. v. City of Richmond*, 224 U.S. 160, 169 (1912).

<sup>134</sup> 249 U.S. 252, 259 (1919).

compensation and that communications companies must pay for their use of public property for private profit. Any attempt by the Commission to commandeer public property by restricting or preempting local franchising processes, procedures and requirements would not only be unlawful under the Communications Act, it would also be an unconstitutional taking under the Fifth Amendment. Moreover, if the Commission was to interfere with the terms under which a competitive franchise is granted, it could force modifications to existing cable franchises, pursuant to state and local level playing field requirements. This, in turn, could deprive the LFAs and other franchising authorities of lawful and reasonable compensation they negotiated with incumbent cable operators for the use of the public rights-of-way. Any such action by the Commission would raise Fifth Amendment issues.

When dealing with Constitutional concerns, like Fifth Amendment takings, a federal agency “must demonstrate that the recited harms are real, not merely conjectural . . .”<sup>135</sup> The Commission has not cited to any real harms for preempting local franchising processes in the NPRM. Rather, the NPRM refers only to allegations<sup>136</sup> which are unsupported or do not demonstrate a nationwide problem warranting federal intrusion into local rights-of-way management. The evidence in these comments shows that local franchising does not constitute an unreasonable barrier to entry but, rather, promotes competition and the universal availability of advanced services. Consequently, the NPRM appears to be an attempt to find a solution for a problem that does not truly exist. Under these circumstances, any preemptive regulations the FCC might adopt pursuant to the NPRM would be arbitrary and capricious.<sup>137</sup> Moreover, the LFAs would remind the Commission that it should interpret the Communications Act in such a

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<sup>135</sup> *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 664 (1994).

<sup>136</sup> See NPRM at ¶ 11.

<sup>137</sup> *Turner Broadcasting System*, 512 U.S. at 664.

way as to avoid Constitutional concerns.<sup>138</sup> That result can be achieved by avoiding preemption of local franchising processes and procedures.

**D. The Commission Should Refrain From Preempting or Restricting Local Franchising Processes Because it Lacks Expertise.**

The FCC has stated that it is “reluctant to exercise jurisdiction in areas where . . . [it] possesses no expertise . . . .”<sup>139</sup> Local franchising is an area where the Commission has no expertise. Unlike local officials, the FCC is not in a position to know what franchising procedures, policies and requirements will promote competition, prevent economic redlining, encourage the growth and deployment of advanced cable systems, and ensure that cable-related needs and interests are met in each community across the nation. This is because what will be effective in a particular jurisdiction will depend on uniquely local factors, such as demographics, population patterns and densities, and the nature and scope of existing facilities in the public rights-of-way. Furthermore, the Commission has no experience franchising cable systems. Local franchising authorities have decades of experience. Accordingly, local governments know what types of franchising procedures and requirements are necessary and most efficient. Local governments are also acutely aware of their needs, and how cable operators can meet those needs consistent with the Cable Act. Given the local nature of issues associated with the construction and operation of cable systems and cable franchising, the FCC cannot possibly craft a reasonable “one size fits all” approach to franchising or make reasonable judgments about whether

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<sup>138</sup> See, e.g., *I.N.S. v. St. Cyr*, 533 U.S. 289, 299-300 (2001).

<sup>139</sup> See *In the Matter of Amendment of Parts 1, 63 and 76 of the Commission's Rules to Implement the Provisions of the Cable Communications Policy Act of 1984*, Memorandum Opinion and Order, 104 F.C.C.2d 386, 394 at ¶ 21 (1986).

municipal franchising regimes are inconsistent with federal goals.<sup>140</sup> The Commission should therefore refrain from preempting or superseding local franchising processes.

IV. **LEVEL PLAYING FIELD PROVISIONS DO NOT NECESSARILY INHIBIT COMPETITION OR THE DEPLOYMENT OF ADVANCED BROADBAND NETWORKS.**

Paragraph 14 of the NPRM solicits comments on the impact “level playing field” provisions might have on the ability of new entrants to obtain competitive franchises. The LFAs assert that, although level playing field requirements may vary from jurisdiction to jurisdiction, as a general matter, level playing field provisions that provide local franchising authorities with flexibility to tailor franchise terms to existing circumstances, consistent with state and federal law, are not inherently anti-competitive. Many level playing field provisions, for instance, have been interpreted not to require a local franchising authority to award a franchise to a competitor that is identical to the franchise awarded to the incumbent cable operator.<sup>141</sup> Rather, level playing field provisions have typically been interpreted to require a competitive cable franchise to be no more favorable or less burdensome, *taken as whole*, than the cable franchise granted to the incumbent cable operator.<sup>142</sup> Level playing field requirements have also been construed to require incumbent and competitive cable franchises merely to be similar.<sup>143</sup> This flexibility permits local franchising authorities and competitive entrants to negotiate franchise terms that make sense in light of the marketplace, state requirements, local demographics and topology,

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<sup>140</sup> As indicated above, the LFAs do not believe the FCC has authority to preempt local franchising authority, procedures and requirements in any event.

<sup>141</sup> See, e.g., *Cable TV Fund 14-A, Ltd. V. City of Naperville*, 1997 WL 280692 at \* 12 (N.D. Ill. 1997), *United Cable Television Service Corp. v. Connecticut Dept. of Public Utility Control*, 1994 WL 495402 at \*5-\*6 (Conn. Super. 1994) and *Knology, Inc. v. Insight Communications Co.*, 2001 WL 1750839 at \*2 (W.D. Ky. 2001).

<sup>142</sup> *Id.* See also, for example, § 2.2.3 of the franchises granted by the North Metro Telecommunications Commission’s member cities and § 2.2.3 of the franchise granted by the South Washington County Telecommunications Commission.

<sup>143</sup> See, e.g., *WH Link, LLC v. City of Otsego*, 664 N.W.2d 390, 396 (Minn. App. 2003).

population density and current needs and interests. Moreover, notwithstanding state and local level playing field requirements, federal law requires local franchising authorities to allow a competitive entrant's "cable system a reasonable period of time to become capable of providing cable service to all households in the franchise area . . . ." <sup>144</sup> Thus, local franchising authorities can work with a competitive cable operator to establish social obligations that satisfy the community's needs and applicable level playing field requirements, while structuring financial and in-kind compensation and build-out requirements in such a way as to ease market entry. In some cases, a competitive franchise applicant may have already constructed a telecommunications network in a municipality, so build-out requirements would not be much of an issue in any event.

The Commission should also be aware that courts have previously considered level playing field requirements and concluded that they are not anti-competitive. For instance, the *City of Naperville* court found that:

the [Illinois] Overbuild Act's requirement that additional franchises be granted on terms no more favorable or less burdensome than those in the incumbent's franchise area does not inhibit competition by excluding potential competitors. Rather, the Overbuild Act is designed to ensure fair competition, a goal that certainly does not conflict with the pro-competitive purpose of the Cable Act. <sup>145</sup>

Similarly, the United States District Court in the *Knology* case determined that "[t]he ordinance here requires that additional franchises be granted on terms no more favorable or less

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<sup>144</sup> 47 U.S.C. § 541(a)(4)(A).

<sup>145</sup> *City of Naperville*, 1997 WL 280692 at \*16.



burdensome than those in the incumbent's franchise. Such a requirement does not inhibit competition by excluding potential competitors. Rather, it ensures fair competition."<sup>146</sup>

Finally, it is important to note that several playing field statutes were in effect at the time Congress enacted the 1992 amendments to the Cable Act promoting competition.<sup>147</sup> Congress chose not to preempt those statutes. Accordingly, it appears that Congress did not consider level playing field requirements to be an insurmountable obstacle to the pro-competitive objectives of the Cable Act.

## V. CONCLUSION.

The LFAs support fair competition in the multichannel video distribution market, and actively encourage the deployment of advanced networks through the local franchising process. It is through local franchising that cable systems have grown and flourished, and have become capable of providing advanced services to much of the population in the United States. The LFAs and other local franchising authorities are acutely aware of the importance of cable systems in today's information economy, and have fashioned franchise requirements that promote universal network availability, while ensuring that cable systems are capable of meeting a community's needs for high-quality service and diverse sources of information. When faced with an application for an additional franchise, local franchising authorities have every incentive to treat the applicant fairly, because the existence of multiple advanced broadband networks in a jurisdiction can lower rates, improve customer service, and encourage the development of new services. No provider, however, should be able to obtain an unfair advantage from the

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<sup>146</sup> *Knology, Inc.*, 2001 WL 1750830 at \*2. See also *Comcast Cablevision of New Haven, Inc., v. Connecticut Dept. of Public Utility Control*, 1996 WL 661805 at \*3 (Conn.Super. 1996) (stating that a state level playing field statute "envision[s] a level playing field so that an applicant for a new franchise does not enter the market at a competitive advantage").

<sup>147</sup> *City of Naperville*, 1997 WL 280692 at \*16.

franchising process. Level playing field requirements which afford local governments the flexibility to address individual circumstances can therefore be used to create a competitively neutral environment in which cable operators can compete fairly. In Minnesota, for instance, it is evident that state and/or local level playing field requirements have spurred the successful development of competitive cable systems in forty-seven (47) communities.

Contrary to the claims of the telephone industry, competition is developing and advanced networks are being deployed. As indicated in Commission data, competitive cable franchises are being awarded nationwide, and advanced telecommunications capability is being made available in a reasonable and timely manner.<sup>148</sup> The evidence proffered by the telephone industry concerning “barriers to entry,” on the other hand, is unsupported and at best highlights isolated instances of unreasonable behavior by local governments. Minnesota law, with its minimum franchise requirements and clearly defined application process, lays out a reasonable process for evaluating applications, makes it relatively quick and easy to obtain a cable franchise, as evidence by the number of competitive cable franchises that have been granted across the state.

Because the existing local franchising process is not broken, there is no need to “fix it” by preempting or restricting local authority. Even if there is a problem (which there is not), the FCC has no authority under 47 U.S.C. §§ 151, 154(i) and 541(a)(2) to take any remedial action. If the Commission was to act, by effectively mandating forced entry into public rights-of-way, Constitutional issues would arise. Those issues can be avoided by maintaining the dual regulatory system Congress established 1984. That system preserves local franchising and, with certain narrow limitations, leaves cable franchising requirements, procedures and decisions in

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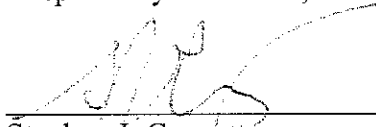
<sup>148</sup> See *Availability of Advanced Telecommunications Capability in the United States*, Fourth Report to Congress, 19 FCC Rcd 20540 (2004).

the hands of local governments. Accordingly, the FCC should forbear from preempting, restricting or modifying local franchising policies and procedures.

**CERTIFICATION PURSUANT TO 47 C.F.R. § 76.6(a)(4)**

The undersigned signatory has read the foregoing Initial Comments of the Burnsville/Eagan Telecommunications Commission; the City of Minneapolis, Minnesota; the North Metro Telecommunications Commission; the North Suburban Communications Commission; and the South Washington County Telecommunications Commission and to the best of my knowledge, information and belief formed after reasonable inquiry, they are well grounded in fact and are warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and are not interposed for any improper purpose.

Respectfully submitted,



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Attorneys for the LFAs

February 10, 2006

# **EXHIBIT A**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

\_\_\_\_\_  
In the Matter of )  
Implementation of Section 621(a)(1) of )  
the Cable Communications Policy Act of 1984 )  
as amended by the Cable Television Consumer )  
Protection and Competition Act of 1992 )  
\_\_\_\_\_

MB Docket No. 05-311

**AFFIDAVIT OF**  
**CORALIE A. WILSON**

STATE OF MINNESOTA    )  
                                  ) ss.  
COUNTY OF RAMSEY     )

I, Coralie A. Wilson, being first duly sworn, depose and state the following:

1. That I am the Executive Director of the North Suburban Communications Commission (the "Commission") and the North Suburban Access Corporation, positions I have held with each respective entity for fifteen (15) years.
2. That the Commission consists of the ten member cities of Arden Hills, Falcon Heights, Lauderdale, Little Canada, Mounds View, New Brighton, North Oaks, Roseville, St. Anthony, and Shoreview, Minnesota.

**PROFESSIONAL BACKGROUND**

3. That, from 1976-1983, I served as liaison from the City of Dayton, Ohio, to the City's public access channel. In the later years of my tenure with Access Dayton, I served as the franchise administrator.
4. That, from 1983-1990, I served as executive director of the Miami Valley Cable Council, a consortium of nine cities south of the City of Dayton, Ohio. During my tenure with the Miami Valley Cable Council, I was responsible for franchise administration, the institutional network, and public, educational and government ("PEG") access channels.
5. That, from 1991-present, I have served as the Executive Director of the North Suburban Communications Commission, where I have been responsible for administration and enforcement of the member cities' franchises, management of the institutional network, and public access facilities and equipment.

6. That I have experience dealing with PEG access, management and video production gained from my years as liaison with Access Dayton, from my experience managing the PEG facility for the Miami Valley Cable Council, and from managing the public access facility for the North Suburban Access Corporation.
7. That I have experience with the management and operation of Institutional Networks. My experience was initially gained from using the I-Net for the return video path at the Miami Valley Cable Council. While at the Commission, I have expanded on this experience, developing the I-Net's data transmission capacity in collaboration with the Roseville School District and, with the rebuilding of the cable system upon approval of a new franchise, installation of Ethernet switches on the fiber portion of the Institutional Network which now supports a number of data applications for the North Suburban Communications Commission's member cities, including (but not limited to) VOIP telephone.

#### **THE CABLE FRANCHISES AWARDED BY THE COMMISSION'S MEMBER CITIES**

8. That the current franchise cable provider serving the Commission's member cities is Comcast.
9. That the franchise awarded by the member cities was issued in 1998 and is set to expire in 2013.
10. That the member cities' franchise documents include an obligation for twelve (12) six (6) MHz PEG channels.
11. That the number of six (6) MHz channels currently dedicated to public access use is four (4).
12. The hours of original public access programming produced per channel each month (and in some cases per year) for each of the four public access channels are as follows: for Channel 14, approximately 149 hours per month; for Channel 15, approximately 75 hours per month; for Channel 21, approximately 10 hours per year; and for Channel 98, approximately 12 hours per month.
13. The hours of repeat public access programming cablecasted per channel each month for each of the four public access channels are as follows: for Channel 14, approximately 581 hours per month; for Channel 15, approximately 655 hours per month; and for Channel 98, approximately 86 hours per month.
14. The total hours of public access programming cablecasted per channel each month (or each year) for each of the four public access channels are as follows: for Channel 14, approximately 730 hours per month; for Channel 15,

approximately 730 hours per month; for Channel 21, approximately 10 hours per year; and for Channel 98, approximately 98 hours per month.

15. That for calendar year 2005 the North Suburban Access Corporation created by the Commission had a total of 376 volunteers, 90 of whom served as program producers.
16. That currently there are three (3) six (6) MHz channels on the cable system currently dedicated to educational access use. The North Suburban Access Corporation handles playback for the Mounds View School District (Channel 20). An average of eight (8) hours of original educational access programming is produced for Channel 20 each month. Approximately 296 hours of repeat educational access programming are cablecasted on Channel 20 each month. A total of approximately 304 hours of educational access programming is cablecast on Channel 20 each month. Channel 20 cablecasts twenty-four (24) hours per day.
17. That Channel 20 is utilized to cablecast school board meetings, sporting events, concerts and special events. Both volunteer community producers and North Suburban Access Corporation staff produce programs that are crewed by students. They have two productions a month in addition to the Board meetings. Parents have produced programming for families, such as the role of FAFSA application in planning college financing.
18. That Channel 18 is fully programmed by the Roseville Area School District. The District cablecasts School District Board meetings, sports, concerts and special events, such as award ceremonies and graduations. Two or three original programs are produced per week during the school year. Channel 18 cablecasts twenty-four (24) hours per day, with an average of twelve hours of programming and twelve hours of computer-generated bulletin board content.
19. That the high school in the Roseville Area School District provides a Media Center with production lab spaces, television studio and three editing suites, projection stations, VCRs, DVD players, projection stations, audiovisual equipment available for checkout.
20. That the St. Anthony/New Brighton School District cablecasts bulletin board programming twenty-four hours a day on Channel 19. The video bulletin board communicates school and community information.
21. That there is one six (6) MHz channel on the cable system currently dedicated to government access use, with each member city of the Commission programming the same channel discretely within its own jurisdictional boundaries.
22. That a total of approximately fifty-two (52) hours of original government access programming is produced each month for the following member cities for which

the public access facility provides programming playback services: Arden Hills- 6 hours; Falcon Heights- 2 hours; Lauderdale- 2 hours; Little Canada- 4 hours; Mounds View- 14 hours; Roseville- 13 hours; St. Anthony- 5 hours; and Shoreview- 6 hours.

23. That a total of approximately 999 hours of repeat government access programming is cablecast each month for the following member cities: Arden Hills- 14 hours; Falcon Heights- 66 hours; Lauderdale- 16 hours; Little Canada- 148 hours; Mounds View- 175 hours; Roseville- 95 hours; St. Anthony- 99 hours; and Shoreview- 300 hours.
24. That the government access channels are utilized to cover city council and other city meetings (planning commission, parks and recreation commission, etc.) Several member cities also produce magazine-style programs and talk shows about city activities and events. The North Suburban Access Corporation also assists member cities in covering parades and festivals. The City of Roseville, Minnesota, has also produced, and won awards for, documentary programs.
25. That, pursuant to the member cities' franchises, Comcast and its predecessors in interest constructed an institutional network consisting of hybrid fiber-coaxial and fully fiber-optic plan. Comcast maintains the Institutional Network while the Commission provides and maintains the electronics needed to use the network.
26. That I-Net utilization includes (but is not limited to) critical transport for data between the member cities, such as distribution of GIS information by the Ramsey County GIS Users Group. Several member cities are also sharing a VOIP telephone system using the Institutional Network for backbone transport. Ramsey County, Minnesota, is using both the St. Paul, Minnesota, Institutional Network and the Commission Institutional Network to connect its facilities in downtown St. Paul with a satellite facility in a city in the north end of the Commission franchise area. On the video side, the I-Net enables the Commission and the North Suburban Access Corporation to: (i) cablecast live programming from remote locations, such as parks and ice rinks; and (ii) share programming with other communities throughout much of the Comcast service territory in Minnesota.
27. That there are over eighty facilities currently connected to the I-Net serving the Commission's member cities. See Attachment 1 hereto.

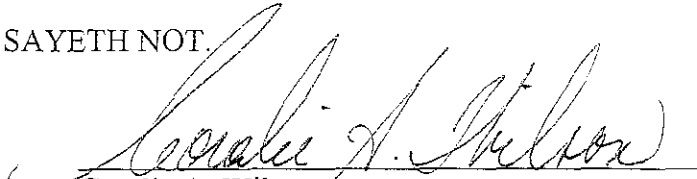
### **COMPETITIVE FRANCHISING**

28. That the Commission's member cities have never formally denied a competitive cable franchise application.
29. That the Commission and its member cities have not received a formal franchise application from a regional bell operating company or a competitive local exchange carrier.

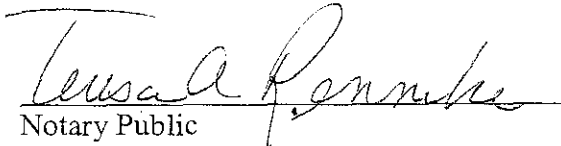


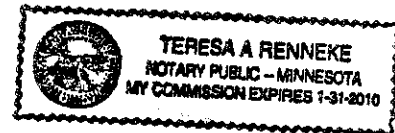
30. That most of the Commission's member cities require two or three readings for ordinances, including ordinances granting cable franchises. These readings can be and often are waived by city councils.

FURTHER YOUR AFFIANT SAYETH NOT.

  
Coralie A. Wilson

Subscribed and sworn to before me this  
9<sup>th</sup> day of February, 2006.

  
Notary Public



# **ATTACHMENT 1**

X - They have a drop  
 Y - They want a drop  
 N - They don't want a drop

**EXHIBIT B**

# North Suburban Area Institutional Connections

## City of Arden Hills

| Inst. Name               | Street Address                | City        | Phone    | I-Net | Sub |
|--------------------------|-------------------------------|-------------|----------|-------|-----|
| Arden Hills City Hall    | 4364 W. Round Lk. Rd. (Temp.) | Arden Hills | 636-5676 | X     | X   |
| Arden Hills Public Works | 1460 W. Hwy. 96               | Arden Hills | 636-5676 | Y     | X   |
| Util.- Booster           | 1230 Red Fox Road             | Arden Hills |          | Y     |     |
| Util.- Lift #1           | 3196 North Cleveland          | Arden Hills |          | Y     |     |
| Util.- Lift #10          | 3804 North Cleveland          | Arden Hills |          | Y     |     |
| Util.- Lift #11          | 1901 Highway 96               | Arden Hills |          | Y     |     |
| Util.- Lift #12          | 1965 Thom Drive               | Arden Hills |          | Y     |     |
| Util.- Lift #13          | 1123 Karth Lake Drive         | Arden Hills |          | Y     |     |
| Util.- Lift #14          | Hwy 96, (MN Nat. Guard)       | Arden Hills |          | Y     |     |
| Util.- Lift #2           | 1850 Co. Rd. E2               | Arden Hills |          | Y     |     |
| Util.- Lift #3           | 1578 Lake Johanna Blvd.       | Arden Hills |          | Y     |     |
| Util.- Lift #4           | 3484 Ridgewood Road           | Arden Hills |          | Y     |     |
| Util.- Lift #5           | 3495 Lake Johanna Blvd.       | Arden Hills |          | Y     |     |
| Util.- Lift #6           | 3328 Lake Johanna Blvd.       | Arden Hills |          | Y     |     |
| Util.- Lift #7           | 3230 Lake Johanna Blvd.       | Arden Hills |          | Y     |     |
| Util.- Lift #8           | 1335 Ingerson Road            | Arden Hills |          | Y     |     |
| Util.- Lift #9           | 3168 Ridgewood Road           | Arden Hills |          | Y     |     |
| Util.- Roseville Station |                               |             |          | Y     |     |

## City of Falcon Heights

| Inst. Name                     | Street Address          | City           | Phone    | I-Net | Sub |
|--------------------------------|-------------------------|----------------|----------|-------|-----|
| Falcon Heights City Hall       | 2077 W. Larpenteur Ave. | Falcon Heights | 644-5050 | X     | X   |
| Falcon Heights Community Bldg. | 2050 W. Roselawn Ave.   | Falcon Heights | 645-2712 | N     | Y   |
| Falcon Heights Fire Station    | 2077 W. Larpenteur Ave. | Falcon Heights | 644-5575 | X     | X   |

## City of Lauderdale

| Inst. Name           | Street Address  | City       | Phone    | I-Net | Sub |
|----------------------|-----------------|------------|----------|-------|-----|
| Lauderdale City Hall | 1891 Walnut St. | Lauderdale | 631-0300 | X     | X   |

## North Suburban Area Institutional Connections

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| Inst. Name | Street Address | City | Phone | I-Net | Sub |
|------------|----------------|------|-------|-------|-----|
|------------|----------------|------|-------|-------|-----|

## City of Little Canada

| Inst. Name                     | Street Address           | City          | Phone    | I-Net | Sub |
|--------------------------------|--------------------------|---------------|----------|-------|-----|
| City Garage                    | 3100 Country Drive       | Little Canada |          | Y     | Y   |
| Ice Rink                       | 430 Little Canada Road   | Little Canada |          | Y     |     |
| Ice Rink                       | 100 E. Demont            | Little Canada |          | Y     |     |
| Little Canada City Hall        | 515 E. Little Canada Rd. | Little Canada | 484-2177 | X     | X   |
| Little Canada Fire Station     | 325 Little Canada Rd.    | Little Canada | 871-5503 | X     | X   |
| Old Little Canada Fire Station | 440 E. Little Canada Rd. | Little Canada | 871-5503 | X     | X   |
| Shelter                        | 350 Eli Road             | Little Canada |          | Y     |     |
| Shelter                        | 2950 Centerville         | Little Canada |          | Y     |     |
| Util.- Booster Station         | 141 Co. Rd. B            | Little Canada |          | Y     |     |
| Util.- Lift Station            | 672 Co. Rd. B.           | Little Canada |          | Y     |     |
| Util.- Lift Station            | 2537 Keller Parkway      | Little Canada |          | Y     |     |
| Util.- Lift Station            | 99 Co Rd. B              | Little Canada |          | Y     |     |
| Util.- Lift Station            | 2458 Dianna Lane         | Little Canada |          | Y     |     |
| Util.- Lift Station            | 2707 Jessica Court       | Little Canada |          | Y     |     |
| Util.- Lift Station            | 1002 Co. Rd. D           | Little Canada |          | Y     |     |
| Util.- Lift Station            | 216 Co. Rd. B-2 E.       | Little Canada |          | Y     |     |
| Util.- Water Meter Station     | 5 Roselawn               | Little Canada |          | Y     |     |
| Util.- Water Tower             | 517 Little Canada Road   | Little Canada |          | Y     |     |

## City of Mounds View

| Inst. Name                         | Street Address      | City        | Phone    | I-Net | Sub |
|------------------------------------|---------------------|-------------|----------|-------|-----|
| Bridges Golf Course                | 2850 82nd Lane NE   | Blaine      |          | Y     | Y   |
| Mounds View City Hall              | 2401 Hwy. 10        | Mounds View | 784-3055 | X     | X   |
| Mounds View Community Center       | 5394 Edgewood Dr.   | Mounds View |          | Y     | Y   |
| Mounds View Fire Station           | Hwy. 10             | Mounds View |          | X     | Y   |
| Mounds View Maintenance Gar.       | 2466 NE Bronson Dr. | Mounds View | 784-3114 | Y     | X   |
| Util.- Booster Station (Reservoir) | 2450 Bronson Drive  | Mounds View |          | Y     |     |

## North Suburban Area Institutional Connections

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| Inst. Name             | Street Address      | City        | Phone | I-Net | Sub |
|------------------------|---------------------|-------------|-------|-------|-----|
| Util.- Lift Station #1 | 5396 Raymond Ave.   | Mounds View |       | Y     |     |
| Util.- Lift Station #2 | 8251 Groveland Road | Mounds View |       | Y     |     |
| Util.- Well #1         | 2401 Highway 10     | Mounds View |       | Y     |     |
| Util.- Well #2         | 2524 Bronson Drive  | Mounds View |       | Y     |     |
| Util.- Well #3         | 2426 Bronson Drive  | Mounds View |       | Y     |     |
| Util.- Well #4         | 2408 Hillview Drive | Mounds View |       | Y     |     |
| Util.- Well #5         | 5100 Long Lake Road | Mounds View |       | Y     |     |
| Util.- Well #6         | 7545 Groveland Road | Mounds View |       | Y     |     |

## City of New Brighton

| Inst. Name                           | Street Address          | City         | Phone    | I-Net | Sub |
|--------------------------------------|-------------------------|--------------|----------|-------|-----|
| Brightwood Hills Golf Course         | 1975 NW Silver Lake Rd. | New Brighton | 638-2150 | X     | X   |
| New Brighton City Hall               | 803 NW 5th Ave.         | New Brighton | 638-2100 | X     | X   |
| New Brighton Fire Station            | 785 NW 5th Ave.         | New Brighton | 633-2727 | X     | X   |
| New Brighton Maintenance Bldg.       | 700 NW 5th Ave.         | New Brighton |          | Y     | X   |
| New Brighton Family Service Cntr.    | 400 NW 10th St.         | New Brighton | 638-2130 | X     | X   |
| Util.- Lift Station 1 (under const.) | To Be Assigned          | New Brighton |          | Y     |     |
| Util.- Lift Station 2                | 531 5th Avenue NW       | New Brighton |          | Y     |     |
| Util.- Lift Station 3                | 515 3rd Avenue NW       | New Brighton |          | Y     |     |
| Util.- Lift Station 7                | 650 Cleveland Ave.      | New Brighton |          | Y     |     |
| Util.- Lift Station 8                | 24 New Brighton Road    | New Brighton |          | Y     |     |
| Util.- PGAC Water Treatment Plant    | 3001 5th Street NW      | New Brighton |          | Y     |     |
| Util.- Well 10 & Iron Removal Plant  | 660 5th Street SW       | New Brighton |          | Y     |     |
| Util.- Well 11 & Iron Removal Plant  | 1375 7th Street NW      | New Brighton |          | Y     |     |
| Util.- Well 12 & Iron Removal Plant  | 2400 Mississippi St.    | New Brighton |          | Y     |     |
| Util.- Well 13 & Water Treatment     | 680 5th Street NW       | New Brighton |          | Y     |     |
| Util.- Well 14                       | 1377 7th Street NW      | New Brighton |          | Y     |     |
| Util.- Well 15                       | 590 20th Street NW      | New Brighton |          | Y     |     |

## North Suburban Area Institutional Connections

| Inst. Name         | Street Address       | City         | Phone | I-Net | Sub |
|--------------------|----------------------|--------------|-------|-------|-----|
| Util.- Well 8      | 600 Silver Lake Road | New Brighton |       | Y     |     |
| Util.- Wells 3 & 4 | 700 Silver Lake Road | New Brighton |       | Y     |     |
| Util.- Wells 5 & 6 | 3001 5th Street NW   | New Brighton |       | Y     |     |
| Util.- Wells 9     | 2745 5th Street NW   | New Brighton |       | Y     |     |

## City of North Oaks

| Inst. Name                   | Street Address         | City       | Phone    | I-Net | Sub |
|------------------------------|------------------------|------------|----------|-------|-----|
| North Oaks City Hall         | 100 Village Center Dr. | North Oaks | 484-5777 | X     | X   |
| North Oaks Recreation Center | 4 Mink Lane            | North Oaks |          | X     | X   |

## City of Roseville

| Inst. Name                         | Street Address            | City      | Phone    | I-Net | Sub |
|------------------------------------|---------------------------|-----------|----------|-------|-----|
| John Rose Minnesota OVAL           | 2661 Civic Center Dr.     | Roseville | 415-2164 | X     | Y   |
| Roseville Activity Center          | 2800 Arona St.            | Roseville | 415-2100 | X     | X   |
| Roseville Cedarholm Golf Course    | 2323 N. Hamline Ave       | Roseville | 633-5817 | X     | Y   |
| Roseville Central Park-Bandshell   | Lexington Ave. -(FH Inet) | Roseville |          | X     | N   |
| Roseville City Hall                | 2660 Civic Center Dr.     | Roseville | 490-2200 | X     | X   |
| Roseville Fire Station 1           | 2701 N. Lexington Ave.    | Roseville | 490-2306 | X     | X   |
| Roseville Fire Station 2           | 2501 N. Fairview Ave.     | Roseville | 636-6763 | X     | X   |
| Roseville Fire Station 3           | 2335 N. Dale St.          | Roseville | 484-5297 | X     | X   |
| Roseville Gymnastics Cntr.         | 1240 Co. Rd. B-2          | Roseville | 415-2190 | Y     | Y   |
| Roseville Harriet Alexander Nature | 2520 N. Dale St.          | Roseville | 415-2161 | X     | X   |
| Roseville Ice Arena                | 2661 Civic Center Dr.     | Roseville | 415-2164 | X     | X   |
| Roseville License Bureau           | 2701 Lexington Ave.       | Roseville | 490-2294 | X     | X   |
| Roseville Maintenance Building     | 2660 Civic Center Dr.     | Roseville | 490-2310 | Y     | X   |
| Util.- Booster Station             | 706 Shryer Ave.           | Roseville |          | Y     |     |
| Util.- Elevated Tank               | 2501 N. Fairview Ave.     | Roseville |          | Y     |     |
| Util.- Lift Station                | 635 S. Owasso Blvd        | Roseville |          | Y     |     |
| Util.- Lift Station                | 2980 Galtier Street       | Roseville |          | Y     |     |
| Util.- Lift Station                | 1610 Co. Rd. C-2          | Roseville |          | Y     |     |

## North Suburban Area Institutional Connections

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| Inst. Name                         | Street Address         | City      | Phone | I-Net | Sub |
|------------------------------------|------------------------|-----------|-------|-------|-----|
| Util.- Lift Station                | 3033 Cleveland Ave.    | Roseville |       | Y     |     |
| Util.- Lift Station                | 435 Wagner Street      | Roseville |       | Y     |     |
| Util.- Lift Station                | 2013 Cohansey Blvd.    | Roseville |       | Y     |     |
| Util.- Lift Station                | 1680 Fernwood Ave.     | Roseville |       | Y     |     |
| Util.- Lift Station                | 3050 Lexington Ave.    | Roseville |       | Y     |     |
| Util.- Lift Station                | 1216 Josephine Road    | Roseville |       | Y     |     |
| Util.- Lift Station                | 3050 Long Lake Road    | Roseville |       | Y     |     |
| Util.- Lift Station                | 1953 Fulham Street     | Roseville |       | Y     |     |
| Util.- Lift Station                | 2050 Walnut Street     | Roseville |       | Y     |     |
| Util.- Lift Station                | 201 Center Street      | Roseville |       | Y     |     |
| Util.- Storm Water Pumping Station | 2535 N. Victoria St.   | Roseville |       | Y     |     |
| Util.- Storm Water Pumping Station | 1658 Millwood Ave.     | Roseville |       | Y     |     |
| Util.- Storm Water Pumping Station | 591 Owasso Hills Drive | Roseville |       | Y     |     |
| Util.- Storm Water Pumping Station | 2340 St. Croix Street  | Roseville |       | Y     |     |
| Util.- Storm Water Pumping Station | 1999 Fulham Street     | Roseville |       | Y     |     |

## City of Shoreview

| Inst. Name                     | Street Address        | City      | Phone    | I-Net | Sub |
|--------------------------------|-----------------------|-----------|----------|-------|-----|
| Shoreview City Hall /Community | 4600N. Victoria St.   | Shoreview | 490-4600 | X     | X   |
| Shoreview Maintenance Bldg.    | 4665 N. Victoria St.  | Shoreview | 490-4650 | Y     | Y   |
| Util.- Booster Station         | 855 Highway 96        | Shoreview |          | Y     |     |
| Util.- Lift Station            | 4468 Chatsworth       | Shoreview |          | Y     |     |
| Util.- Lift Station            | 3580 Cohansey         | Shoreview |          | Y     |     |
| Util.- Lift Station            | 425 Gramsie Road      | Shoreview |          | Y     |     |
| Util.- Lift Station            | 875 Gramsie Road      | Shoreview |          | Y     |     |
| Util.- Lift Station            | 636 Highway 96        | Shoreview |          | Y     |     |
| Util.- Lift Station            | 1088 Lake Beach Drive | Shoreview |          | Y     |     |
| Util.- Lift Station            | 3366 Lexington Ave.   | Shoreview |          | Y     |     |

## North Suburban Area Institutional Connections

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| Inst. Name              | Street Address           | City      | Phone | I-Net | Sub |
|-------------------------|--------------------------|-----------|-------|-------|-----|
| il.- Lift Station       | 4680 Lexington Ave.      | Shoreview |       | Y     |     |
| Util.- Lift Station     | 915 Oak Ridge            | Shoreview |       | Y     |     |
| Util.- Lift Station     | 3194 West Owasso Blvd.   | Shoreview |       | Y     |     |
| Util.- Lift Station     | 3212-1/2 W. Owasso Blvd. | Shoreview |       | Y     |     |
| Util.- Lift Station     | 4338 Reiland Lane        | Shoreview |       | Y     |     |
| Util.- Lift Station     | 4465 Rice Street         | Shoreview |       | Y     |     |
| Util.- Lift Station     | 699 Schifsky Road        | Shoreview |       | Y     |     |
| Util.- Lift Station     | 700 Schifsky Road        | Shoreview |       | Y     |     |
| Util.- Lift Station     | 4307 Snail Lake Blvd.    | Shoreview |       | Y     |     |
| Util.- Lift Station     | 4412 Snail Lake Blvd.    | Shoreview |       | Y     |     |
| Util.- Lift Station     | 512 Suzanne Ave.         | Shoreview |       | Y     |     |
| Util.- Lift Station     | 5024 Turtle Lane East    | Shoreview |       | Y     |     |
| Util.- Lift Station     | 3121 Woodbridge          | Shoreview |       | Y     |     |
| Util.- Sucker Lake Pump | 50 Highway 96 W.         | Shoreview |       | Y     |     |
| Util.- Water Tower      | 745 County Road E        | Shoreview |       | Y     |     |
| Util.- Water Tower      | 5880 Lexington Avenue    | Shoreview |       | Y     |     |
| Util.- Well             | 785 Highway 96           | Shoreview |       | Y     |     |
| Util.- Well             | 883 Highway 96           | Shoreview |       | Y     |     |
| Util.- Well             | 4965 Hodgson Road        | Shoreview |       | Y     |     |
| Util.- Well             | 902 Monterey             | Shoreview |       | Y     |     |
| Util.- Well             | 750 Mound Avenue         | Shoreview |       | Y     |     |
| Util.- Well             | 4675 Victoria Street     | Shoreview |       | Y     |     |

## City of St. Anthony

| Inst. Name              | Street Address        | City        | Phone    | I-Net | Sub |
|-------------------------|-----------------------|-------------|----------|-------|-----|
| SAV Liquor Store #1     | 2900 Pentagon Drive   | St. Anthony |          | Y     |     |
| SAV Liquor Warehouse #2 | 3900 Silver Lake Road | St. Anthony |          | Y     |     |
| St. Anthony City Hall   | 3301 Silver Lake Rd.  | St. Anthony | 789-8881 | X     | X   |



## North Suburban Area Institutional Connections

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| Inst. Name                    | Street Address        | City        | Phone    | I-Net | Sub |
|-------------------------------|-----------------------|-------------|----------|-------|-----|
| .. Anthony Fire Station       | 2900 Kenzie Terrace   | St. Anthony | 788-1434 | X     | X   |
| St. Anthony Public Works      | 3801 Chandler Dr.     | St. Anthony |          | X     | X   |
| Util.- Foss Road Lift         | 3829 Foss Road        | St. Anthony |          | Y     |     |
| Util.- Harding Lift           | 2700 37th Ave         | St. Anthony |          | Y     |     |
| Util.- Water Filtration Plant | 3807 Silver Lake Road | St. Anthony |          | Y     |     |
| Util.- Well #5                | 2920 Silver Lake Road | St. Anthony |          | Y     |     |

## CTV

| Inst. Name                     | Street Address     | City          | Phone    | I-Net | Sub |
|--------------------------------|--------------------|---------------|----------|-------|-----|
| Canadian Days Parade-drop      | Little Canada Rd   | Little Canada |          | X     |     |
| CTV Irondale studio            | 2425 Long Lake Rd. | New Brighton  | 783-9334 | X     | X   |
| CTV Van 1                      | 2425 Long Lake Rd. | New Brighton  | 783-9334 | X     |     |
| CTV Van 2                      | 950 Woodhill Dr.   | Roseville     | 481-9554 | X     |     |
| Lake Owasso Beach - drop       | ??? N Owasso Bvd.  | Shoreview     |          | X     |     |
| LC Spooner Park- drop          | Eli Rd.            | Little Canada |          | X     |     |
| NB Parade - drop               |                    | New Brighton  |          | X     |     |
| RAHS Parking Lot (on B2)- drop |                    | Roseville     |          | X     |     |
| Rosefest parade - drop1        | Lexington Ave.     | Roseville     |          | X     |     |
| Rosefest parade - drop2        | Lexington Ave.     | Roseville     |          | X     |     |
| Rosetown Legion field-drop     | W. Co. Rd. C.      | Little Canada |          | X     |     |

## Dist 282 - SAVNB Schools

| Inst. Name                    | Street Address        | City        | Phone    | I-Net | Sub |
|-------------------------------|-----------------------|-------------|----------|-------|-----|
| ISD 282 District Office SAVNB | 3303 33rd Ave. NE     | St. Anthony | 706-1000 | X     | X   |
| St. Anthony High School       | 3303 33rd Ave. NE     | St. Anthony | 706-1100 | X     | X   |
| St. Anthony Middle School     | 3303 33rd Ave. NE     | St. Anthony | 706-1200 | X     | X   |
| Wilshire Park Elementary      | 3600 NE Highcrest Rd. | St. Anthony | 706-1030 | X     | X   |

## Dist 621 - Mounds View

| Inst. Name           | Street Address         | City      | Phone    | I-Net | Sub |
|----------------------|------------------------|-----------|----------|-------|-----|
| Area Learning Center | 4182 N. Lexington Ave. | Shoreview | 482-8203 | N     | X   |